

Industry Seeks Summary Judgment in Coal Ash Lawsuit

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On October 25, 2012, industry intervenors the National Mining Association (NMA) and Utility Solid Waste Activities Group (UWAG) filed a motion for summary judgment in *Appalachian Voices v. Jackson*, a lawsuit filed by environmental groups and coal ash recyclers seeking a deadline for EPA to issue a final rulemaking on coal ash. The plaintiffs alleged that EPA has violated its non-discretionary duty under RCRA § 2002(b) by not completing a review and revision, if necessary, of coal ash regulations every three years. EPA last completed a review of its coal ash regulations in 2000. In the motion for summary judgment, NMA and UWAG argued that EPA does not have a duty to review coal ash regulations every three years because the 1980 Beville Amendment to RCRA exempted coal ash from Subtitle C regulation. NMA and UWAG argued that the Beville Amendment created a one-time obligation for EPA to study coal ash and did not create requirement for EPA to re-evaluate its determination in the future.

Further, the NMA and UWAG argued that even if EPA does have a duty to review its coal ash regulations, EPA is meeting its statutory obligations because EPA is already in the process of reviewing the coal ash rules. In October, EPA said that its review of the proposed coal rulemaking will certainly take more than six months and could take over a year to complete. Given that the rulemaking timeline could extend into 2014, NMA and UWAG argued that little relief is available to the plaintiffs through litigation because the remedy they seek is already underway.

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